

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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Joint Application of	:	
	:	
AMERICAN AIRLINES, INC.	:	
	:	
and	:	Docket DOT-OST-2020-0033
	:	
PHILIPPINE AIRLINES, INC.	:	Docket DOT-OST-2009-0337
	:	
for statements of authorization under 14 C.F.R. Part	:	
212 (reciprocal codesharing) and exemptions	:	
pursuant to 40 U.S.C. § 40109	:	
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SURREPLY AND MOTION OF
UNITED AIRLINES, INC.

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Counsel for
United Airlines, Inc

February 22, 2022

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SURREPLY AND MOTION OF
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United¹ hereby submits this brief Surreply to American and PAL’s (“Joint Applicants”) latest filing in this docket and requests leave from the Department to do so.² For the reasons set forth below, United respectfully reiterates its request that the Department continue to defer its approval of American and PAL’s joint application until United’s ongoing access issues at Manila have been adequately resolved.

1. Unsurprisingly, the Joint Applicants’ latest filing contains a litany of strawman arguments to try to convince the Department to approve their application without delay—the primary argument being that United’s slot issues have been resolved, claiming that United

¹ Common names are used for airlines.

² Good cause exists for the Department to grant United’s Motion for Leave to File and to consider United’s Surreply, which seeks to correct the record and provide the Department with additional facts with which to consider its position.

accepted slots offered by the coordinator for the Summer 2022 season. While United wishes this were so, this is simply false.

2. United has been fully transparent about its ongoing access issues at Manila, which remain unresolved for more than two years. Irrespective of the Joint Applicants' latest claims, United does not have the required slots for additional Manila service. Importantly, United has returned the slots from the coordinator's latest offer because the slots are not at times United can utilize to provide consumer friendly and competitive incremental service between the U.S. and Manila.³ Moreover, it is United—not the Joint Applicants nor anyone else—that is the sole arbiter of whether or not the offered slots are usable. And the fact remains that despite applying for incremental slots at usable times each season, United has not been able to obtain usable slots. Indeed, as further evidence that United has continued to seek workable slots and has been denied, United attaches its most recent communications with the slot coordinator about Summer 2022 as Exhibit A, redacted for confidentiality, with key items excerpted below:

- Email from United to Coordinator: "Checking on possible improvement in S22."
- Email from Coordinator to United: "Unable due runway congestion." [sic]
- Email from United to Coordinator: "Based on inability to retime, returning the above slots as they are unworkable times and would require operations in [redacted] when customs/immigration is closed."

³ To preempt any suggestion by the Joint Applicants that United returned the slots only in response to their filing, United was not required to return the slots to the coordinator until at least January 31, 2022, and held the slots pending the Summer 2022 slot use waiver in hopes of viable slots becoming available after the publication of the slot waiver.

United has made clear in this⁴ and other dockets,⁵ as well as to the regulators and the slot coordinator at Manila, the access difficulties United has been having since at least 2019 remain unchanged.

3. The Joint Applicants' suggestion that the Department's ongoing deferral of approval is "untenable" also misses the mark. As United has said all along, United does not object to the underlying authority the Joint Applicants are seeking. However, the Department's authority to intervene here, by deferring approval until United's airport access issues are addressed, is well within its authority and supported by precedent in other contexts.⁶

4. The Joint Applicants suggest that the Department's inaction here would create a "troubling and disruptive precedent." United disagrees. By approving the application prematurely, before United's access concerns are settled, the Department would be acting against its own precedent and the public interest, and knowingly furthering an unfair disparity in growth between United and Philippine carriers.

5. Apart from parsing all of United's statements and focusing singularly on United's acceptance of the slots—which United has now demonstrated to be incorrect—the Joint Applicants offer no clear path forward for a mutually beneficial resolution. United again reiterates its

⁴ See Answer of United (Dec. 28, 2021), Dockets DOT-OST-2020-0033 and DOT-OST-2009-0337.

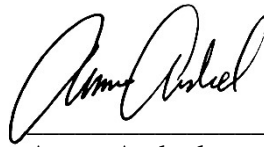
⁵ See Answer of United (Nov. 15, 2019) and Surreply of United (Dec. 5, 2019), Docket DOT-OST-2019-0156; Answer of United, Docket DOT-OST-2020-0012 (Feb. 10, 2020).

⁶ The Department has withheld approval of carriers' applications until the Department and/or the objecting U.S. carrier was satisfied that the underlying commercial challenges leading to the objection were adequately addressed. See Objection of American Airlines, Inc. to Application of Air China Limited d/b/a Air China for Renewal of Exemption Authority (Jan. 30, 2017), Docket DOT-OST-2013-0001; see Answer of Northwest Airlines, Inc. (Apr. 21, 1997) and Withdrawal of Objection of Northwest Airlines, Inc. (May 6, 1997), Docket DOT-OST-95-537; see also Conditional Objection of Delta Air Lines (May 4, 2016), Docket DOT-OST-2016-0070; see also Answer of Kalitta Air (Oct. 29, 2014), Docket DOT-OST-2014-0111.

willingness to continue discussions with the Department and relevant Philippines Government authorities to find a resolution to its access challenges at Manila so that United, as well as the Joint Applicants, can move forward to implement their respective commercial plans.

WHEREFORE, for the reasons set forth above, United urges the Department to continue to defer action on the American/PAL application until United's continuing access issues at Manila have been resolved to the satisfaction of United.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Amna Arshad', is written over a horizontal line.

Amna Arshad
Freshfields Bruckhaus
Deringer LLP

Counsel for
United Airlines, Inc.

February 22, 2022

EXHIBIT A

From: Boyce, Michele [REDACTED]
Sent: Tuesday, 15 February 2022 1:03 PM
To: Slots Airport Coordination [REDACTED]
[REDACTED]

Subject: UA S22 SCR - MNL (15FEB)

SCR
S22
15FEB
MNL

CUA833 UA834 26MAR [REDACTED] JJ
RUA833 UA834 26MAR [REDACTED] JJ
CUA833 UA834 27MAR27OCT [REDACTED] JJ
RUA833 UA834 27MAR27OCT [REDACTED] JJ
SI TIME IS UTC.
SI CHECKING ON POSSIBLE IMPROVEMENT IN S22.
GI THANK YOU. [REDACTED]

From: Slots Airport Coordination [REDACTED]
Sent: Monday, February 14, 2022 8:15 PM
To: Boyce, Michele [REDACTED]
[REDACTED]
Subject: [EXTERNAL] RE: UA S22 SCR - MNL (15FEB)

This message was sent from outside of United Airlines. Please do not click links or open attachments unless you recognize the sender and know that the content is safe.

SCR
/
S22
15FEB
MNL

HUA833 UA834 26MAR [REDACTED] JJ
UUA833 UA834 26MAR [REDACTED] JJ
HUA833 UA834 27MAR27OCT 1234567 [REDACTED] JJ
UUA833 UA834 27MAR27OCT 1234567 [REDACTED] JJ
SI ALL TIMES UTC
SI UNABLE DUE RUNWAY CONGESTION
GI BRGDS [REDACTED]

From: Boyce, Michele [REDACTED]
Sent: Wednesday, February 16, 2022 9:00 AM
To: 'Australia Slot Coordination' [REDACTED]
[REDACTED]

[REDACTED]
Subject: UA S22 SCR - MNL (16FEB) (SLOT RETURN)

SCR

S22

16FEB

MNL

DUA833 UA834 26MAR [REDACTED] JJ

DUA833 UA834 27MAR27OCT 1234567 [REDACTED] JJ

SI TIME IS UTC.

SI BASED ON INABILITY TO RETIME, RETURNING THE ABOVE SLOTS AS THEY ARE UNWORKABLE TIMES
AND WOULD REQUIRE OPERATIONS IN [REDACTED] WHEN CUSTOMS/IMMIGRATION IS CLOSED.

GI THANK YOU. [REDACTED]

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on the following persons by causing a copy to be sent electronically in accordance with the Department's Rules of Practice:

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Amna Arshad

February 22, 2022